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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 236

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INDEPENDENT UNION OF CRAFTSMEN,
Respondent.

BRIEF FOR RESPONDENT INDEPENDENT UNION OF CRAFTSMEN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

BENJAMIN WHAM,
Counsel for Respondent.

August 23, 1940.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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Consideration of the Seventh Circuit cases disproves this criticism.

Conclusion.

Since minor circumstances existing only at the time of organization are relied upon by the Board and the Independent has fully represented the employees for almost three and one-half years, the decree of the court below ordering the company to cease and desist domination, interference and support is sufficient and an order disestablishing the Independent would be punitive 18

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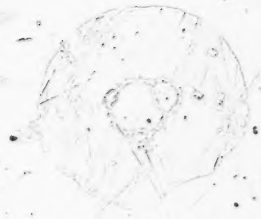

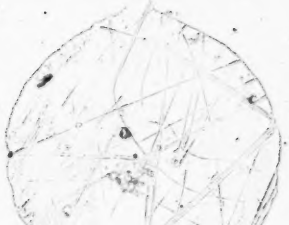

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I.

Important Facts Were Ignored by the Board.

Petitioner, on page 9, states that the Court below in its opinion "gives an impression of adherence to the established principles of judicial review under the Act." It goes on to say that this impression results only because the Court, in its discussion of the evidence, "repeatedly omits mention of the pertinent findings of the Board and of the evidence supporting them."

One difficulty with the Petitioner's position in this respect is that it did this very thing in its decision and order. We refer particularly to the fact that the Petitioner cavalierly brushed aside the more than two hundred

printed pages of testimony (R. 712-926) in addition to exhibits introduced by the Independent showing that it is a live, active, vigorous labor organization and that for more than three years it has fully represented the employees at the 39th Street Plant of the Link-Belt Company, and that it is the choice of well over a majority of the employees as a collective bargaining agent.

The following are some of the important facts ignored by the Board in whole or in part:

1. Formation of Independent Union of Craftsmen.

The Board's garbled account of the Independent's organization requires a correct summary of it.

The Independent Union of Craftsmen was formed after the National Labor Relations Act was declared to apply to manufacturing companies by the decision in the Jones & Laughlin case, decided by the Supreme Court of the United States April 12, 1937. The Independent Union of Craftsmen had no existence prior to that time. The Board would make it appear that it was an outgrowth of the old employees' representation of N. R. A. union in use at the plant previously. There was no connection between the two. After the Supreme Court thus made it clear that the old employees' representation plan was illegal, the majority of the employees formed and joined the Independent Union of Craftsmen, as they were permitted to do by the National Labor Relations Act. (N.L.R.A. Sec. 7.) Its organization came about in the following manner:

George F. Linde was an assembler and an arc welder at the 39th Street plant (R. 712). He enjoyed considerable popularity among the employees and possessed the qualities of leadership as his subsequent activities will bear out (R. 712, 713).

In September, 1936, Linde observed that the workmen were in a turmoil and there was considerable talk about the C.I.O. which was governed by the Steel Workers Organizing Committee (SWOC) (R. 712). He never served on the Board of the old employees representation plan (R. 713) and he never approved of it because it was composed of representatives of the employer and the employees. He favored a wholly independent union, that is independent from the employer and independent from outside labor organizers (R. 714, 759). He stated concerning outside unions:

> "* * * in the last ten or fifteen years some of the acts, not in one union, but a greater number of them, were pretty raw." (R. 759-760.)

Linde believed that the employees didn't want to be deprived of the right of governing themselves (R. 714). He believed that the men preferred a union in which they could govern themselves and not be bothered by outside influences.

Linde was approached by Louis Salmons who at that time was interested in the C.I.O. (R. 714). Salmons favored an outside influence governing the men while Linde favored self-government (R. 713). In the words of Linde, he and Salmons branched off like the Y of a road (R. 713).

While waiting for the decision in the Jones & Laughlin case, then pending in the Supreme Court, the men talked about the advisability of organizing their o n union and trying to get the whole membership of the company in such a union so that they could govern themselves (R. 715). When the Act was declared to apply to manufacturing concerns on April 12, 1937, Linde and some of his friends, Hubert Brucks, John Litster and Arthur Rosenbaum, decided to talk over the matter of organizing a union of their own (R. 715-16). He felt that the senti-

ment in the shop was strong enough to warrant making the effort (R. 716). They had a knowledge of independent unions at the time through friends of theirs in the steel district who were members of the Steel Employees Independent Labor Organization at Carnegie-Illinois Steel Company in South Chicago, and also through what they had read in the newspapers (R. 716). Linde and Brucks drew up a form of application for membership in the union at the home of Brucks after Litster and Rosenbaum had left on the night of April 12 (R. 716). The following day they had copies made of what they had drafted and during the course of the day interviewed several employees whom they asked to go along with them and sponsor a list (R. 717). Sheets of paper were prepared, headed and distributed among the men selected and they were told to go to work. Solicitation of various employees took place on the 14th, 15th and 16th of April (R. 717). Linde testified that a few of them were signed during the working hours but the great majority of them were signed at noon, in the morning, and the evening (R. 717). Linde further stated that the **general attitude of the men was that they all wanted to join.** He stated:

> "* * * the great majority of them were signed at noon, in the morning and the evening, because the fellows would come around our benches as we were working and say, 'who has got that list, I want to sign it, who has got this list?' It was so big a feature that they were all anxious to get on the band wagon and do something. That was the general attitude." (R. 717-718.)

This accounts for the success of the Organizing Committee and **fully refutes the skepticism of the Board** (R. 1534).

By Friday evening, about 760 signatures had been obtained and he and Brucks believed that they had enough. They believed that all the signers thought along the same

lines as they did and all intended to authorize them (Linde and Brucks) to go ahead with the organization (R. 718). Copies of these lists are in evidence as Intervenor's Exs. 2, 2A and 3A (R. 1420-1439).

On Friday evening, April 16, Linde and Brucks decided that they had to have a lawyer to give advice on the organizational work. They knew that the Steel Employees Independent Labor Organization had a lawyer and they had seen his name in the newspapers, so they called him and asked for an appointment (R. 718, 719).

They saw him on Saturday morning April 17, 1937, and explained their situation to him. They talked over the former procedure which had been followed and an arrangement on fees (R. 719). He drew up the proposed constitution which was practically the same as other constitutions he had drawn for other labor organizations (R. 719-20). The names of Brucks, Linde, Rask, Froling, Rosenbaum, Jeske and Litster were set forth as committeemen and Litster, Froling and Linde as delegates. See Board's Ex. 16 (R. 1314-17). It was decided that Linde and Brucks would get the committee together (R. 720). On Saturday afternoon, April 17th, they had contacted the seven named as committeemen in the constitution and they met on Sunday afternoon, April 18th. They had a large majority of employees signed but felt that in order to approach the company they had to have some designated officers (R. 721). Accordingly, they adopted the temporary constitution which constituted the Organizing Committee as the officers and agents of the Union until an election could be had (Board's and Intervenor's Ex. 16, R. 1314-1317).

On Monday, April 19th, the Independent's attorney sent out a form of recognition to be presented to the company by the delegates (R. 721, Intervenor's Ex. 1, R. 1420).

It was submitted to Mr. Berry, the assistant general manager that afternoon. Litster, Froling and Linde attended the first meeting with Berry on Monday, April 19th. At that time Litster said,

> "Mr. Berry we have a list of names here we wish to present to you and ask that you recognize this group of men as the sole bargaining agent of the employees of the Link-Belt Company's 39th Street plant. We have banded ourselves under the name of Independent Union of Craftsmen." (R. 724.)

The list, Intervenor's Ex. 2 (R. 1420) consisting of about 760 names, was handed to Berry (R. 724-5). Berry asked if he could have the documents and was told that he couldn't have them but he could look them over. He counted the names and checked against the list of the employees of the company. He checked for an hour and one-half or two hours (R. 725) and said that as yet he did not have authority to sign the recognition agreement, Intervenor's Ex. 1 (R. 1420) and as soon as he got permission he would advise them (R. 725-6). The committee took the lists and left.

There were between 950 and 1,000 who were eligible for membership in the Union (R. 725).

On Wednesday morning, April 21st, Berry called them into his office and said he was authorized to act as the agent of the Company in this behalf and asked for an inspection of the cards (R. 722).

On Saturday, April 17th, the Independent's attorney had drafted a form of application which he suggested they have printed and signed by the men (R. 727). These cards give authority to the Independent to bargain for the signers (Boards' Ex. 13, R. 1313). They were signed up by the same persons that had signed the lists. In the meantime others had signed the lists (R. 727).

A group of the members advanced some money to print the cards and hire a hall (R. 763).

The committee by this time had already hired a hall for the purpose of holding a meeting and having the attorney explain the purpose and meaning of the constitution and by-laws which they had already had printed for submission to the men (R. 729) and to ratify the acts of the organization committee and to elect permanent officers.

On Thursday, April 22, the Independent Union of Craftsmen held a mass meeting at the Lithuanian Hall, 3133 South Halsted Street, Chicago. The meeting was announced by distribution of small cards and by word of mouth (R. 730). There were about 550 present.

Litster presided and the attorney explained the National Labor Relations Act and the proposed constitution of the Union (R. 732). The attorney said that under the decision of the Supreme Court the Company could in no way interfere with, aid or abet the formation of a union and that it was entirely up to the men as to whom they wished to represent them and how they wished to be represented. He also said that the Company could neither directly or indirectly finance the Union and that the Union had to stand on its own feet as far as the Company was concerned (R. 733).

Linde was the secretary of the meeting and recorded the proceedings (R. 734).

After the reading of the constitution and the talk by the attorney, a motion was made and passed that the work of the organizing committee be approved and ratified (R. 734). On a rising vote fully 90% of those present stood (R. 734). The resolution was as follows:

> "Resolved that the constitution be and it is hereby ratified, approved and adopted; and the acts of the Organizing Committee are hereby ratified and adopted." (R. 837.)

There was a good deal of discussion from the floor. Paul Bozurich and Fred Johnson, members of the C.I.O., were

present and conducted themselves in an unruly manner (R. 735). Bozurich "did a lot of hollering and attempted to keep anyone else from talking." Fred Johnson came down the aisle with his coat open, his shirt out, slightly inebriated and hollered at the speakers (R. 791). He was escorted out (R. 1095).

It was decided at the meeting to hold an election of officers on May 4th and that until then the officers and committee which had been carrying on would continue. The resolution adopted was as follows:

> "Resolved that the committeemen and delegates named in the constitution continue to serve in their respective capacities for one month or until a general election can be held by secret ballot for the election of permanent committeemen and delegates." (R. 837.)

The recognition agreement was read and discussed, voted upon and approved.

Notices of the Union's election of officers to be held on May 4th were posted on the Union's bulletin boards. Between 400 and 450 attended the election. Litster opened the meeting and called for the election of a temporary chairman. Kresge was elected temporary chairman and Linde was elected temporary secretary (R. 736). Nominations were held and the election conducted by an election committee. The vote was by secret ballot. Rask was elected president of Local No. 1, Kowatch vice president, Conybear secretary, Rosenbaum treasurer, and Linde, Litster and Froling delegates to the general council (R. 737).

The manner of electing shop stewards was agreed upon (R. 737). The various departments were to hold an election at noon or before or after working hours by secret ballot as to who should represent the department as stewards. Thirty-one stewards were thereafter elected in this manner (R. 738).

2. The Legal Form of the Independent Union of Craftsmen.

The Independent Union of Craftsmen was later incorporated (August 3, 1937) under the laws of the State of Illinois. Its objects are set forth in the charter Intervenor's Ex. 6 (R. 1448). Object (h) is as follows:

> "To establish a labor union which shall by its by-laws provide for the organization of lodges in the several plants of said Company with virtual autonomy in local matters." (R. 1449).

It was organized with a view to including locals in all of the plants of the Link-Belt Company (R. 728). Up to the time of trial two locals had been established, Local No. 1 at the 39th Street plant with which this cause is now concerned, and Local No. 2 at the Caldwell-Moore plant. **It should be pointed out that Local No. 2 at the Caldwell-Moore plant is not involved in this proceeding.** Temporary by-laws were adopted by the general council providing for a general council, a plant committee for each plant, jurisdiction over members, initiation fees, duties of officers, power of the general council, auditing committee, issuance of charters, establishing order of business and passing of amendments. See Intervenor's Ex. 4 (R. 1440), the first by-laws for the general council and also Board's-Intervenor's Ex. 16 (R. 1314) for the temporary constitution.

Intervenor's Ex. 5 (R. 1444) is a copy of the first by-laws which governed member plants and plant committees. These by-laws concerned themselves with eligibility to membership, election of delegates to the general council, election of stewards, time of annual meetings and elections, who shall preside at the meetings, discipline of the members, quorum necessary to conduct business, suspension of members, recording of the minutes, keeping of funds, etc. (R. 1444-47).

Intervenor's Ex. 7 is the final by-laws of the Independent Union of Craftsmen which were adopted by the Board of Directors August 9, 1937 (R. 1451) after incorporation. They deal with membership, elections, meetings, quorum, withdrawals, reinstatements, initiation fees, dues, accounting and division, board of directors, collective bargaining, discipline, local charters, boards of stewards, and amendments (R. 1451-56).

There is no reasonable question concerning the fact that the Independent Union of Craftsmen was a labor organization. This was admitted by the Trial Examiner during the course of the hearing (R. 739) when he said:

> "I think you have already clearly established that it is a labor organization."

3. The Independent Union as a Business Enterprise.

The Independent Union of Craftsmen keeps minute books and account books (R. 835, 849). The books and records including its minutes and the records of income and disbursements were produced at the hearing and were found to be regular in every respect (R. 835, 849, 856).

The Union has a checking account at the Drexel State Bank; has vouchers for checks; and all cancelled checks are kept (R. 849). It collects dues of 50 cents per month (R. 749). A regular accounting procedure is followed in its money matters (R. 850). Over $3,000 had been collected by the Union from the members of Local No. 1 in the form of fees and dues to the time of trial (R. 749, 850, 854) eleven months after its inception. The Union held dances for its members (R. 852); purchased stationery and supplies including a typewriter; paid lawyer's fees of $1,000 and had arranged to pay an additional sum for representation before the Labor Board and thereafter (R. 749 and 779). The Union has rented and paid for the use of a hall

and all other expenses incidental and necessary to the operation of the Union. At least two meetings are held every month, one for the stewards and one for the entire body (R. 749). The meetings are held off Company property (R. 750). At the time of the trial it was trying to work out a system of insurance and sick benefit for the members (R. 782).

It also carried on extensive collective bargaining with the company, as will be seen in Section 4 following.

4. Collective Bargaining Between the Independent Union of Craftsmen and the Company.

On May 4, 1937 representatives of the Union met with Mr. Berry on the subject of an increase in wages to the hourly paid employees (R. 740).

On May 7, following the election, the Union by letter requested a conference to begin negotiations for a contract between the Independent Union and the Company (R. 741).

On May 11 representatives of the Union held another conference with Mr. Berry on the wage question. The demand was for a 10% general increase in wages. Berry stated that the Company was unable to meet the Union's demand (R. 741).

Undaunted by this refusal the representatives of the Union met with Mr. Kauffmann, the president of the Company, on May 19 at the downtown office to carry on negotiations for a general wage increase. Mr. Kaufmann explained that the Company had given the employees a 6% increase on November 2, 1936 and a 10% increase on May 15, 1937. **The Company finally agreed to a 5% increase in all hourly rates to be effective on June 1, 1937** (R. 741).

On May 21 representatives of the Union met with the representatives of the Company and submitted a draft

of an all inclusive bargaining contract covering wages, hours and working conditions between the Company and the Union (R. 741, 1457). There were negotiatoins on the subject leading to a contract during the days following May 21 (R. 742).

On June 1, 1937, at a conference held by the representatives of the Union and the Company there was discussion pertaining to seniority which could not be ironed out to the Union's satisfaction. The Union on this occasion again went over the head of Mr. Berry and conferred with Mr. Kauffmann, the president, Mr. Carter a vice president and Mr. Burnell a vice president (R. 742-3). The Union's attorney drafted the contracts (R. 743).

The executive committee of the Union was ready to sign the all-inclusive bargaining contract when Mr. Berry was advised by counsel for the Company not to sign the contract. Instead the **Company agreed to abide by what had been agreed upon in the written document** under an oral understanding (R. 743, 1460).

On August 13 the representatives of the Union and the Company bargained about a bonus payment to be paid to the night workers. The Union felt that extra compensation should be given to those who had to go off their day shifts and work nights. **The Company finally agreed to a 5% bonus for the night workers** (R. 744).

On September 17 the representatives of the Union and the Company met with reference to a better vacation policy (R. 744) and on October 2 they met for the purposes of negotiating a closed shop (R. 744). On October 8 they met on the question of seniority layoffs.

On October 22 the representatives of the Union again went over the head of Mr. Berry and met with Mr. Kauffmann concerning a closed shop (R. 745). On November 2 the representatives of the Union met with Mr. Berry on

the subject of the closed shop and the Company refused to grant it (R. 745).

On November 9 the Union committee met with Mr. Berry on the question of vacations for 1938.

On November 15 the representatives of the Union met with Mr. Berry and discussed the issuance by the Company of a **statement of policy which would embody the terms agreed to as set forth in Intervenor's Ex. 9** (R. 745, 1460).

On December 3 representatives of the Union and the Company met with reference to vacations (R. 745).

On December 6 they again met with reference to vacations and at that time further conferences were held with the Company regarding the issuing of the above **statement of policy which was issued** (R. 745, Intervenor's Ex. 10, R. 1464).

On February 15, 1938 representatives of the Union met with representatives of the Company with reference to vacation pay for men who had been laid off for lack of work or for other causes during 1938. On February 21, 1938 they had another conference on this subject and an **agreement was reached that the employees who were laid off in 1938 would be paid the amount of money to which they were entitled in lieu of a vacation** (R. 746). Intervenor's Ex. 11 (R. 1467) is a copy of the statement that was issued pursuant to the Independent Union's negotiations on vacations.

On March 3, 1938 representatives of the Union and the Company met and discussed questions concerning work and Independent Union layoffs (R. 746).

As the hearing commenced March 14, 1938 evidence of further negotiations does not appear in the record. However, in addition to these matters several questions of im-

portance to the employees were taken up by the shop stewards with the foremen and heads of the departments and satisfaction was usually obtained from the Company (R. 747). **There were questions of vacations, layoffs, seniority, and back pay and several minor matters along with better lighting, better air conditions and safety matters that were the subjects of bargaining. Back pay** for a period of nine weeks was obtained for a painter in the crane department.

At page 778 of the record appears this very significant statement by the Trial Examiner, Mr. McCarthy:

> "In other words the record is clear that there has been collective bargaining by a labor organization."

II.

Unimportant Circumstances on Which Board Predicates Its Findings of Domination, Interference and Support:

1. The So-called Background of Labor Relations at the Plant Including the Discharge of Salmons and Novak (Both of Whom Were Re-employed Prior to the Organization of the Independent) and the Old Plan of Employee Representation or N.R.A. Union (Which Was Terminated Prior to the Recognition of the Independent).

Realizing that its case was weak, the Board was forced to rely on a number of trivial incidents all of which occurred at the time of the organization of the Independent. Among these it singled out three which constitute the so-called background of labor relations at the Plant. These include the circumstance of a labor spy, who ceased to be such prior to the organization of the Independent (R. 129-130), the discharge of Salmons and Novak, both of

whom were re-employed prior to the organization of the Independent (R. 221, 154), and the old plan of employee representation, or N.R.A. Union, which was terminated prior to the recognition of the Independent (R. 824). We do not believe that this court will find it necessary to review the case based upon such attenuated reasoning.

As pointed out above in Section I1, the only connection between the old N.R.A. Union and the Independent is that the Independent Union was formed at the time it became necessary to dissolve the old N.R.A. Union. On April 12, 1937 the United States Supreme Court held that the National Labor Relations Act applied to manufacturing concerns engaged in interstate commerce. Since the old plan of employee representation provided for representatives of the Company and employees, for all employees to belong to the plan automatically without dues, and for the company to defray the plan's necessary expenses, it was obviously illegal and was dissolved as quickly as possible. The employees were free under the National Labor Relations Act to form and join any union of their own choosing. A majority chose to form and join the Independent. **Since there were a large number of N.R.A. unions of this type throughout the country, the Labor Board's argument would prevent the formation of independent unions in those plants. This would emasculate the plain terms of the Act** which provide that employees may form and join any union they choose.

2. Recognition of Independent Prior to First Members' Meeting.

As pointed out in I1, prior to the demand for recognition the organization committee held a meeting and elected temporary officers (R. 721) and this action was ratified at the members' meeting and the officers continued in office

until a regular election could be held (R. 837). This constituted a labor organization (N.L.R.A. Sec. 2(5)). It is a matter of common knowledge that the C.I.O. continued as a Committee on Industrial Organization for several months after the Jones & Laughlin decision and then completed its organization and became the Congress on Industrial Organization.

3. Solicitation on Company Time.

As pointed out in Section I1 above, this was not done to any considerable extent by the Independent. It was not done with the consent of the Company, and was done to an equal extent at least by the C.I.O.[1]

4. Hectographing on Company Machine of Application and Notice of Meeting.

The attorney for the Board, the Trial Examiner for the Board and the Board seemed to think this was important. The Independent established conclusively that this was done after hours without the knowledge or consent of the Company (R. 768).

5. The Presence of Foremen at the First Meeting of the Independent.

The Independent established that Grenis and Siskauskis were not invited and never belonged (R. 1051). It is obvious from the latter's testimony that he is a man of limited experience and his story that he merely dropped in out of curiosity is undoubtedly the fact (R. 1051).

1. Instances of C.I.O. solicitation on company time and instances of warnings to representatives of Independent by management appear in the Record at the following pages: 662, 760, 780, 781, 800, 803, 816, 818, 819, 822, 826, 827, 829, 830, 832, 857, 862, 868, 871, 872, 873, 880, 881, 889, 894, 895, 900, 904, 910, 913, 916, 917, 918, 921, 928, 1060. At page 901 the Trial Examiner said: "I think the Record is pretty clear that it worked both ways."

III.

Petitioner's Criticism of the Court Below Is Immaterial and Unfair.

The petitioner attempts to persuade this court that the court below requires special treatment, and to prove this unwarranted assertion, the Board lists all of the decisions of the court below in labor cases, which deal with many different questions, to show that the court has not always agreed with the Board. Such evidence is immaterial to a consideration of the case at bar, which must stand or fall on its own record, and is unfair as it assumes that the Board opinions are 100 per cent correct and that whenever a circuit court of appeals disagrees with the Board it has invaded the Board's jurisdiction.

A consideration of the Seventh Circuit cases cited by the petitioner in a footnote (Petition 9, 10) shows that the court below was not considering questions of evidence in three cases: *Inland Steel* v. *N.L.R.B.*, 109 F. (2d) 9; *N.L.R.B.* v. *Swift & Co.*, 108 F. (2d) 988; and *Falk Corp.* v. *N.L.R.B.*, 106 F. (2d) 454. These cases do not indicate that the court is invading the jurisdiction of the Board to make findings of fact if supported by substantial evidence.

In five of the cases the court accepted the Board findings on factual issues: *Fort Wayne Corrugated Paper Co.* v. *N.L.R.B.*, decided March 28, 1940, *M. H. Ritzwoller Co.* v. *N.L.R.B.*, decided May 8, 1940, *Stewart Die Casting Corp.* v. *N.L.R.B.*, decided July 3, 1940, *N.L.R.B.* v. *Falk Corp.*, 102 F. (2d) 383, and *N.L.R.B.* v. *J. Greenebaum Tanning Co.*, 110 F. (2d) 984. These cases disproved the assertion of the Board.

In three cases the court accepted the Board's findings

except as to certain discharges under Section 8 (3) of the Act: *Montgomery Ward & Co.* v. *N.L.R.B.*, 107 F. (2d) 555 (the court reversed two out of 23 findings of the Board); *N.L.R.B.* v. *Boss Mfg. Co.*, 107 F. (2d) 574, and *N.L.R.B.* v. *Goshen Rubber & Mfg. Co.*, 110 F. (2d) 432.

In only three cases were the Board's findings completely reversed on the ground that they were not based upon substantial evidence: *Jefferson Electric Co.* v. *N.L.R.B.*, 102 F. (2d) 949; *C. G. Conn* v. *N.L.R.B.*, 108 F. (2d) 390; and *Fansteel Metallurgical Corp.* v. *N.L.R.B.*, 98 F. (2d) 375. In the last case the decision of the court below was affirmed on other grounds by this court.

In *N.L.R.B.* v. *Columbian Enameling & Stamping Co.*, 96 F. (2d) 948, the Supreme Court (306 U. S. 292) held, in affirming on other grounds the decision of the Seventh Circuit Court, that an essential finding of the Board was not supported by substantial evidence. This case destroys the effect of the unfair criticisms of the court below because it shows that the Board is not infallible.

Conclusion.

No new point of law is presented by this case and the decision of the court below is not in conflict with decisions by other circuit courts. The facts in each case must be considered separately and the discussions of facts in one case cannot be considered rules of law binding another court treating a different set of facts.

The court, in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, said (page 270):

> "We may assume that there are situations in which the Board would not be warranted in concluding that there was any occasion for withdrawal of employer recognition of an existing union * * * even though it had ordered the employer to cease unfair labor practices."

Such a situation exists in the case at bar because of the fact, pointed out by Judge Treanor of the court below in his separate opinion, that all of the instances relied upon by the Board to show domination, interference and support occurred at the time of the Independent's organization, a fact recognized by the Board's findings being phrased in the past tense (R. 1534-5, 1551). No evidence was introduced at the hearing of domination during the year following organization and preceding the hearing but the undisputed evidence shows affirmatively that during this latter period the Independent was a strong vigorous representative of the employees. And this situation has carried on for almost two and one-half years since the hearing.

In *National Labor Relations Board* v. *Jones-Laughlin, Inc.*, 301 U. S. 1, this court stated (page 33):

> "Thus in its present application the statute goes no further than to safeguard the right of employees to self organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer."

The court below has prevented an injustice by holding that the evidence could not support the conclusion that the Independent is dominated by the employer and by ordering the company to cease and desist all and every kind of interference, and has assured to the members of the Independent the rights guaranteed them by the National Labor Relations Act.

We therefore respectfully submit that the Petition for Writ of Certiorari should be denied.

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August 23, 1940.